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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ARSAPE S.A.,
Plaintiff,
v.
JDS Uniphase Corporation,
Defendant.

NO. C 03-04535 JW

**ORDER GRANTING PLAINTIFF'S
MOTION TO STRIKE JDSU'S OCTOBER
6, 2005, LETTER**

AND RELATED COUNTERCLAIM
AND THIRD-PARTY COMPLAINT

Plaintiff Arsape ("Arsape") and Third-Party Defendant Donovan Micro-Tek, Inc. ("DMT") bring this motion to strike Defendant JDS Uniphase Corporation's ("JDSU") seven-page letter from Jeffrey J. Lederman to the Court (hereinafter, October 6, 2005 Letter), Docket Item No. 117. In the letter, JDSU responds to a question raised by the Court during the hearing on the parties' respective motions for summary judgment and partial summary judgment.

Arsape contends that the letter should be stricken because it is untimely and purports to set forth new evidence without a proper foundation.

The motion to strike is GRANTED. The Court did not solicit the letter, and therefore the submission was improper. Further, the Court did not consider any information in the letter in arriving at its decision on the parties' respective motions.

Dated: November 14, 2005

03cv4535strike

/s/James Ware
JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Gaylord A. Virden gavyls62@msn.com
3 Jeffrey J. Lederman jlederman@winston.com
3 Nicole P. Dogwill ndogwill@winston.com

4
5
6 **Dated: November 14, 2005**

7 **Richard W. Wieking, Clerk**

8 By: /s/JW Chambers
9 **Ronald L. Davis**
9 **Courtroom Deputy**